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SOME REMARKS ON THE VIEWS OF THE ORTHODOX CHURCH IN THE UNITED STATES ON AN APPROPRIATE MODEL OF CHURCH-STATE RELATIONS

Orthodoxy believes that Jesus Christ is the true ruler of everyone and everything, King of Kings and Lord of Lords.¹ The Kingdom of Christ – the Orthodox Church – is not considered as a substitute or successor to secular power.² The main aspect of Christian relations with the state is strict separation between the Kingdom of God and the kingdom of the temporary world.³

The Church⁴ is not any kind of self-government or culture-preserving organization, but describes itself as one Orthodox and Catholic Church in all the regions

¹ 1 Tim. 6.15.

² John, 18.36, compare with 1 Tim. 2.2.

³ Acceptable opposition: Acts 4.19; 5.29; strict separation: Ap. 17.5.

⁴ General overview, historical outline, definitions, distinctions and current data: F. von Lilienfeld s.v. Orthodox Kirchen, *Teologische Realenzyklopaedie* (TRE), Vol. 25, 423–464; A. Kallis s.v. Panorthodoxe Konferenzen TRE 25, p. 615–624; H. Butterfield s.v. Christianity in History, V. *The Orthodox Church*, [in:] *Dictionary of the History of Ideas*, Vol. 1, p. 409–411; T. FitzGerald s.v. *Eastern Christianity in Encyclopedia of Religion*, ed. L. Jones, Thomson-Gale 2005, Vol. 4; *The Encyclopedia of Eastern Orthodox Christianity*, Vol. 1–2, Routledge 2011. For the development of the Orthodox Church in the United States, see T. FitzGerald, *The Orthodox Church*, Westport Conn. 1995; J. A. McGuckin, *The Orthodox Church: An Introduction to its History, Doctrine and Spiritual Culture*, Blackwell 2008; Orthodoxy in the United States: p. 80 ff. *The Orthodox Churches in a Pluralistic World*, ed. E. Clapsis, Brookline Mass. 2004; T. Hopko, *The Orthodox Faith: an Elementary Handbook on the Orthodox Church*, 4 Vols., Orthodox Church in America 1972, p. 8; Bp. Anthimos, *Reply of the Orthodox Church to Roman Catholic Overtures on Reunion*, rev. ed. St. Nectarios 1986; V. Lossky, *The Mystical Theology of the Eastern Church*, St. Vladimir's Seminary Press 1976; J. Meyendorff, *The Orthodox Church, Its Past and Its Role in the World Today*, St. Vladimir's Seminary Press 1981; K. Ware, *The Orthodox Way*, St. Vladimir's Seminary Press 1979; C. J. Tarasas (gen. ed.), *Orthodox America: The Orthodox Church in America* Syosett, New York 1975. For an outline of the development of church-state relations see also the articles: Caesaropapism, Heersherkult, Byzanz, Gallikanismus, ius circa sacra, Liberalismus, Eigenkirche, Kirche und Staat, Plazet für kirchliche Gesetze und Erlasse, Russland, Staat, [in:] *Die Religion in Geschichte und Gegenwart*, ed. H. v. Campenhausen, E. Dinkler, G. Gloege, K. E. Logstrup, K. Gallig, Tübingen 1959.

of the *oikumene*.⁵ The Orthodox Church perceives itself as a supernatural institution, revealed by God to the world through Jesus Christ for the salvation of all people and of the world itself. However, various social initiatives are encouraged and play an important role, also in preserving national and local customs and culture. Yet the Orthodox Church in the USA does not consider itself as an association of people with a particular religious feeling⁶ or sentiments of Eastern Christianity, nor as a self-government of any diaspora in the United States or a subsidiary of any state with a duty to care for the religious needs of its citizens.

The continuous multiplicity of local churches was present even at the beginnings of Christianity. The apostles founded churches in which they instituted a hierarchy to continue their mission. These pastors were invested with the authority to regulate the affairs of their churches in accordance with local needs. It must be stated that the existence of autonomous or autocephalous churches administered independently applies only to the external sphere. The inner communion is expressed in a common confession of faith by the entire body of the Church, participation in the same sacraments, and submission to the same canons and ecclesiastical decrees.

The Orthodox Church considers the teaching of St. Cyprian, that "Christ established one Church, even though it is divided throughout the entire world into many parts. It is the same with the unity of the bishops, who, although many, constitute a unity due to the identity of their conviction",⁷ as always current and acting to describe it.

Local Orthodox Churches are obliged to keep the legislation adopted by the entire Church intact, as well as customs and traditions emanating from the apostolic era. That duty refers not only to dogmas of faith and morality, but also to issues of ecclesiastical discipline, order and worship.⁸

The boundaries of the patriarchates are exclusively geographical. They are not ethnophyletic, cultural or liturgical, and were defined by Ecumenical Councils through canons and ecclesiastical regulations. One of the first Orthodox parishes in the continental United States, organized in New Orleans, was multinational in character.⁹

Canons 17 of the 4th and 38 of the 5th and 6th Ecumenical Council ordered correspondence between an ecclesiastical jurisdiction and the political division of the region for the sake of efficient administration: "Let the order of things eccle-

⁵ Comp. Gal. 3, 28.

⁶ However, some conflicts have occurred between laity seeing themselves as independent parishioners and priests: J. H. Erickson, *Orthodox Christians in America*, p. 106–107.

⁷ Ep. 52 ad Antonium; Ep. 65 ad Rogatianum; Similarly: Irenaeus of Lyons, *Contra Haereses*, 5.20.1.

⁸ Apostolic Canon 64; canons 12 and 13 of the First Ecumenical Synod; canon 56 of the Quinisext Ecumenical Synod.

⁹ J. H. Erickson, *Orthodox Christians in America*, Oxford 1999, p. 53. Development of multiethnic parishes: p. 106 ff; Standing Conference of Canonical Orthodox Bishops in the Americas and further development: p. 113 ff; new waves of immigration after the 1965 Immigration Act and fall of the Soviet Union: p. 121 ff; new converts to Orthodoxy – people dissatisfied with modernism and other trends in Christian denominations, some similarities with Catholic "Traditionalists" or "Integrists": p. 122–123.

siastical follow the civil and public models". North America and other lands that are outside the boundaries of the local Churches as defined by the canons and decisions of the Ecumenical Councils and by the Patriarchal and Synodical Tomes are included in the "other" "barbarian" lands, according to the general terminology of the 4th Ecumenical Council and other synods. This has no ethnic or cultural affiliation and is geographical matter.¹⁰

Certainly, in accordance with dogmas, canons and Church teaching, Orthodox clergy had different opinions and proposals concerning the optimal model of relations between secular and ecclesiastical power. A good example is the avid supporter of the power of the tsar Joseph Volotsky (of Volotsk, of Volkolamsk, 1439(40?)–1515), who restated the formula of Agapetus¹¹ considering the emperor as a man, but with power from God, and therefore God's deputy on Earth. However, Joseph based the autocrator's legitimacy to power only when he adheres to Church dogmas, practice and moral teaching,¹² therefore limitation of government's arbitrariness has a tradition in Orthodox reflection on the state.

Patristic writers, such as Meliton of Sardes, Hippolytus of Rome, and Origenes, stressed the coincidence of Augustus' unification of the Mediterranean and the birth of Christ¹³ as a sign of God's providence. Eusebius of Caesarea also considered this coincidence as God's providential act.¹⁴ A parallel was seen as Jesus Christ defeated polytheism and Augustus defeated multi-centrism and the chaos of civil war (although it must be explained that no Roman emperor was ever considered a secular semi-savior or saint on earth by Orthodox theology). Imperial peace and ease of communication fostered the spreading of Apostolic teaching.¹⁵ Similarly the United States, although never an Orthodox country, provided the opportunity for free and peaceful development of the Orthodox Church.

The legislative power of the state since antiquity has been considered as beneficial and given by God.¹⁶ Humans needs state and secular authority to protect them from the visible results of sin, lessen evil and endorse moral good.¹⁷

¹⁰ www.ec-patr.org/docdisplay.php?lang=en&id=287&tla=en (10.06.2011); see also: L. J. Patsavos, *Unity and Autocephaly: mutually exclusive?*, www.goarch.org/ourfaith/ourfaith8131 (retrieved 11.05.2011).

¹¹ Biographical note: J. Albany Christie (1867), *Agapetus* (3), [in:] W. Smith, *Dictionary of Greek and Roman Biography and Mythology*, Vol. 1, Boston 1867, p. 69; writings: *Patrologia Graecae*, LXXXVI, 1153–1186; Konstantinos D. S. Paidas, *He thematike ton byzantinon "katoptron hegemonos" tes proimes kai meses byzantines periodou (398–1085). Symbole sten politike theoria ton Byzantinon*, Athenai 2005, *passim*.

¹² See: D. M. Goldfrank, *Old and New Perspectives on Iosif Volotsky's Monastic Rules*, "Slavic Review" 1975, Vol. 34, No. 2, p. 279–301.

¹³ Eusebius, *Hist. eccl.* IV 26. 7; Hip., *In Dan.* IV 1; Orig. *Contr. Cels.* II 30.

¹⁴ Eusebius, *De laudibus Const.* 16.

¹⁵ A similar view of the Roman Empire to that established by God's will: Gregory Nazianz, *Oratio* 4. 37.

¹⁶ Theodoret, in 2 Thessal. 2. 6; Theoph. Bulg. in 2 Thessal. 2. 6–8.

¹⁷ Biblical examples: 1 Kings 12. 13–15; Romans 13. 4–5; 1 Peter 2. 14–15; King David considered as a type of ideal monarch; however, Pagan rulers also have respect and dignity: Is. 45.1; see V. Tsylin, s.v., *Gosudarstvo*, [in:] *Pravoslavnyaya Enciklopediya* (in Russian), Vol. 12, p. 202–211.

The Church, while preserving autonomous law and keeping within church life proper¹⁸, can exist in the framework of diverse legal systems. The canon law principle of “economy” (Oikonomia, the relaxation of a particular rule for a greater good¹⁹) allows wide room for adjustment. The practice of Oikonomia has similar biblical roots to the Latin dispensation – proper, reasonable governance, rational management, helping to avoid positivistic statolatry and mechanical “rule of law”.

Bishop John (Kallos) of Amorion²⁰ explicitly criticized the practice of various Christian communities in America, as they changed into “social service agencies” and “closed mutual admiration societies” for so-called conscious and aware Christian elites. According to Bishop John these communities hold that the future and restoration of America lies in secular, purely social and economic issues. However the future of America lies not in ideologies and secularism but in the conversion of every citizen and allowing Jesus Christ to enter into one’s life. Here the universal and unchanging mission of the Orthodox Church is declared: to deliver truth and salvation in Christ; secular activities are just supportive and subsidiary elements of Church life.

Orthodoxy does not accept the supremacy of civil authority over the Church either by Protestant-type unified ruler and *Landesbischof* function, or by the Anglican system established by the Act of Supremacy.²¹

However, it is also fundamentally different from the congregationalism of the Reformed Churches and Anabaptists.

¹⁸ L. J. Patsavos, *The Canonical Tradition of the Orthodox Church*, www.goarch.org/ourfaith/our-faith7071 (retr. 13.05.2011).

¹⁹ H. Erickson, *Oikonomia in Byzantine Canon Law*, [in:] *Law, Church and Society: Essays in Honor of Stephan Kuttner*, ed. K. Pennington, R. Somerville, Philadelphia 1977, p. 225–236.

²⁰ www.orthodoxresearchinstitute.org/articles/misc/john_thermon_usa.htm; a critique of secularism as rejection of ecclesiastic ethos and admiration of worldly spirit, secularism – distortion by the spirit of flesh and the passions and injustice as a constant problem in Christian life, especially when there is no persecution; secularism in theology and pastoral care, the differentiation between the good creation of God (contrary to Gnostic fallen demiurge and his evil creation) and the “world” meaning sin, passions, spirit of flesh deprived of the Holy Spirit’s life and energy, Palamas teaching about the world not to be adored but also not to be hated, liberation from a “world” understood as love of material objects and passions means becoming akin to Jesus Christ (Theoleptos of Philadelphia); the Orthodox Church as true healer of spiritual sickness of each and every man; the secularized Church defined as a religious organization professing deism and only satisfying religious feelings of men simultaneously neglecting the neptic and therapeutic potential of the Church, the Church is not a preacher of an ideological system or abstract ideas and arguments, the Orthodox Church cannot be contrasted and compared with ideologies and socio-political systems, the Church is neither an emulator nor an imitator of secular society; Church pastoral care consists of purifying the heart and illumining one’s mind (*nous*), not providing beautiful rituals to observe, psychological counseling and relaxation techniques: Metropolitan Hierotheos of Nafpaktos, *Secularism in Church, Theology and Pastoral Care*, www.pelagia.org/htm/ar01.en.secularism_in_church.htm#s1 (retrieved 10.07.2011).

²¹ Opposition to secular power was demonstrated in the 19th century, as larger numbers of Orthodox Christians arrived in the USA from the mid-1860s, with waves of immigration from Europe and Mediterranean, and local public policies of patronizing the Protestant religion, despite constitutional clauses, started causing difficulties. In the early 19th century local officials began to routinely deny, among others, Orthodox Churches of their canonical freedoms (J. Witte, s.v., *Politics*, [in:] *The Encyclopaedia of Protestantism*, Vol. 3, p. 1517). There is a possibility that it was similar with anti-Catholicism. Although Orthodoxy has no office similar to the Roman See, there is a strong hierarchical order without allegiance to any nation or state.

The same is true of Gallicanism, Febronianism or other systems that accept the omnipotent absolute state (not necessarily monarchy).²²

The concept of Caesaropapism is not of Orthodox or Byzantine origin. This widespread and misleading term was invented by 19th-century scholars to create a simple instrument to describe how the Byzantine emperor allegedly acted as both “caesar” (i.e., emperor, autocrator) and pope.²³ The term implies that, in effect, the Orthodox Church was subjected to the control of the state, and that emperors could decide on matters of church doctrine. Orthodox opinion is that emperors who defied the church at large²⁴ faced opposition from both laity and clergy. If used at all, the term Caesaropapism should be carefully defined and applied, depending on the particular ruler and on the particular sphere of church-state relations.

Liturgical norms order every celebrant to commemorate the bishop of the local church during Divine Liturgy at prescribed places. When the bishop himself is serving, he commemorates the primate of the eparchy, the metropolitan, while the metropolitan commemorates the primate of the Diocese, the patriarch. After the consecration of the Divine Gifts, similar commemorations are made as a sign of ecclesiastical communion of faith and hierarchical order. Therefore there is no commemoration of the secular ruler as a Church supervisor (“Caesar-pope”) with whom communion is kept.²⁵ Only in the Litany of Peace and the Litany of Fervent Supplication does the Church pray for sovereigns and for the authorities in general. They are the continuation of ancient prayers for rulers, soldiers etc., which are well preserved in patristic testimonies: “super illam propitiationis hostiam obsecramus Deum pro communi ecclesiarum pace, pro recta mundi compositione, pro impera-

²² Historical overviews on the development of church-state relations: ed. N. H. Baynes, H. S. L. B. Moss, *Byzantium. An Introduction to East Roman Civilization*, Oxford 1961, esp. H. Gregoire on the Byzantine Church, p. 86–136; K. Guggenberger, *Geschichte des Staatskirchentums*, 1926; E. Sehling, *Geschichte der protestantische Kirchenverfassung*, Berlin 1930; E. Caspar, *Papstum unter byzantinischer Heerschaft*, Tübingen 1933; K. Voigt, *Staat und Kirche von Konstantin den Grossen bis zum Ende der Karolingerzeit*, Stuttgart 1936; H. Lietzmann, *Das Problem Staat und Kirche im westromischen Reich*, Berlin 1940; A. Michael, *Die Kaisermacht in der Ostkirche*, Darmstadt 1959; n. Addamiano, *Chiesa e stato. Dalle origini del cristianesimo ai patti lateranensi*, Roma 1969; A. W. Ziegler, *Religion, Kirche und Staat in Geschichte und Gegenwart*, München 1969; B. D. Hill, *Church and State in the Middle Ages*, New York, 1970; *Outlines of Byzantine Law: L. Siciliano Villanueva, Diritto Byzantino*, Milano 1908; M. Frehero, *Iuris graeco-romani tam canonici quam civilis*, Vol. 1–2, Francofurti, 1596; Z. von Lingenthal, *Historiae iuris graeco-romani delineation*, Heidelberg 1839.

²³ The essential essay on the subject of Caesaropapism and the reality of the Byzantine epoch: D. J. Geanakoplos, *Church and State in the Byzantine Empire: A Reconsideration of the Problem of Caesaropapism*, [in:] *Byzantine East and Latin West: Two Worlds of Christendom in Middle Ages and Renaissance. Studies in Ecclesiastical and Cultural History*, New York 1966, p. 55–83; Lack of “Caesaropapism” or state control over the Church in Kievan Rus’: G. P. Fedotov, *The Russian Religious Mind*, Cambridge Mass. 1946; esp. 23 ff. and 395 ff.; G. V. Vernadsky, *Vizantijskii ucheniia o vlasti tsaria i patriarkha*, Recueil N. P. Kondakov, Prague 1926.

²⁴ Arianism, Henotikon of Emperor Zeno, support of iconoclasm, Council of Lyons in 1274, Council of Ferrara-Florence in 1438–1439.

²⁵ Ecclesiastical communion in connection with Eucharist and Holy Trinity: Metropolitan John Zizioulas, *The Mystery of the Church in the Orthodox Tradition*, “One in Christ” 1988, No. 24, p. 295; Metropolitan John Zizioulas, *The Pneumatological Dimension of the Church*, “Communio” (Eng.) 1974, No. 1, p. 142–158. Cf. John Zizioulas, *The Doctrine of God the Trinity Today: Suggestions for an Ecumenical Study*, [in:] *The Forgotten Trinity*, ed. A. Heron, Vol. 3, A Selection of Papers Presented to the BCC Study Commission on Trinitarian Doctrine Today, London BCC 1991, p. 19–32.

toribus, pro militibus et sociis”.²⁶ The complaints of Arnobius over Diocletian’s and Maximian’s persecution also mention such prayers: “cur immaniter conventicula [meruerunt] dirui? in quibus summus oratur Deus, pax cunctis et venia postulator, magistratibus, exercitibus, regibus, familiaribus, inimicis”²⁷.

Another ancient example is given by Tertulian (Apol. 30): “precantes sumus omnes semper pro omnibus imperatoribus, vitam illis prolixam, imperium securum, domum tutam, exercitus fortes, senatum fidelem, populum probum, orbem quietum”; a less detailed description is given by Justin Martyr in Ap. 1.17.²⁸

All these ancient prayers were not introduced because of the post-Constantinian establishment of Christianity, and they are not based on the presumption that government is Orthodox, or even Christian.

The legislation issued by the Kingdom of Greece in the early 19th century gives a good example of authentic Caesaropapal solutions, which had no ecclesiastical sanction and were entirely condemned by the Ecumenical Patriarchate. On 23rd July 1833 a Royal Decree entitled “Proclamation of Independence of the Greek Church” was drawn up and signed. It constituted the first Statutory Law of the inappropriately decreed Autocephalous Church of the Kingdom of Greece. This “Decree” was a verbatim translation of an organic law of the year 1818 of the Bavarian Consistorium. It was profoundly influenced by the Protestant doctrine of the omnipotent secular sovereign. The administrative head of the Church was a layman – the king (article 1). The Church ought to be governed by a 5-member permanent Synod, recognized as “Holy Synod of the Kingdom of Greece”, whose members are chosen by the Government (articles 2–3) and who swear “fealty to the king”, upon undertaking their duties (article 8). This Synod is “presided” over by a Royal Commissioner, appointed by the king; any Synodic acts taking place in the Commissioner’s absence were invalid (articles 6–7). Prior approval by the Government was necessary to announce or execute any Synodic decision (article 9). Hierarchs were to be proposed by the Synod, with decisive approval by the government; similar procedure should have been applied in the matters of transferring, ceasing or demoting from ecclesiastical functions (article 16). All relations of the Holy Synod and whole Greek clergy with “external secular or Church authorities” were prohibited, except “through the acknowledged Secretariat of State” (article 19). The Ecumenical Patriarchate refused to recognize the aforementioned provisions.

²⁶ I Epistle of Clement, 59–61; Cyril Jeros. Myst. 5.8, Patrologia Graeca 33.1115.

²⁷ Adv. Nat. 4.36, Patrologia Latina 5.1076.

²⁸ Issues of commemorating as a sign of sacramental communion and unity of Orthodoxy with the church hierarch, not unity with secular power: Metropolitan Panteleimon Rodopoulos, Commemoration of the Primate in the Provinces Known as Neae Chora in Greece. An Ecclesiological and Canonical Issue, www.ec-patr.org/doc-display.php?lang=en&id=290&tla=en (20.04.2011); see evidence of early Western liturgical practice: G. Burian Ladner, *The ‘Portraits’ of Emperors in Southern Italian Exultet Rolls and the Liturgical Commemoration of the Emperor*, “Speculum” 1942, Vol. 17, No. 2, p. 181–200; Pious emperor guided and protected by Christ and Saints: K. Corrigan, “Speculum” 1942, Vol. 17, No. 2, p. 181–200; “The Art Bulletin” 1978, Vol. 60, No. 3, p. 407–416.

An example of Church-supported secular legislation is Greek law 590/1977, which was issued (Govt. Journal 146/31-6-77, vol. A) “regarding the Statutory Charter of the Church of Greece”. The Charter secures the legal and canonical functions of the Church’s administrative customs, in compliance with the Greek Constitution (art. 3, par. 1), and “clearly defines the place of the Greek Church in the Greek State”, on the basis of its traditional principle of “mutual acceptance”.²⁹

Harold J. Berman has noted³⁰ that although it is common opinion that the First Amendment provides “separation of church and state”,³¹ it does not contain the word “church” but “religion”, and not “state” but “congress”. Therefore it is always good to read the legal text carefully to avoid drawing the wrong presumptions and conclusions. The opinion was expressed that the United States Supreme Court uses its own analysis of ecclesiastical polity and administration, idiosyncratic and considered by some authors as inconsistent, in a significant number of cases involving, among others, churches. Appellate courts have also imposed their own concepts of ecclesiastical affairs interacting with secular issues.³²

²⁹ Characteristics of Decree and current Greek law according to: www.orthodoxresearchinstitute.org/articles/church_history/constantinidis_stages_greek_church.htm; the mutual independence of Church and State is additionally demonstrated in the Patriarchal and Synodical Act of 1928 – an international agreement between the Ecumenical Patriarch and the Government of Greece, with the consent of the autocephalous Church of Greece. The contents of the Patriarchal and Synodical Act of 1928 are ratified by the Constitution of Greece (art. 3, § 1), in Greek state law (Law 3615/1928, Codified Law 5438/1932 and the Constitutional Charter of the Church of Greece, Law 590/1977). Such independence is universal and is not considered as state concession or the result of customary international law.

³⁰ Faith and Order, p. 221; see also J. T. Noonan, *The Believer and the Powers that Are*, New York 1987, p. 16.

³¹ Term derived from the French Enlightenment, appropriate in discussion about 18th-c. Catholic France changed into a secular state.

³² J. Witte, F. Alexander, *Christianity...*, p. 293–294; bibliography is extensive and still growing, e.g.: McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1990, No. 1409, 1437; L. Pfeffer, *Church, State, and Freedom*, Boston 1967; M. W. McConnell, J. H. Garvey, T. C. Berg, *Religion and the Constitution*, 2006; W. H. Marnell, *The First Amendment: Religious Freedom in America from Colonial Days to The School Prayer Controversy*, 1964; P. Hamburger, *Separation of Church and State*, Harvard 2002; M. A. Hamilton, *God vs. the Gavel: Religion and the Rule of Law*, Cambridge 2005; M. DeWolfe Howe, *The Garden and the Wilderness: Religion and Government in American Constitutional History*, Chicago 1965; D. L. Dreisbach, *Thomas Jefferson and the Wall of Separation Between Church and State*, New York 2003; D. L. Dreisbach, M. D. Hall, *The Sacred Rights of Conscience: Selected Readings on Religious Liberty and Church-State Relations in the American Founding*, Indianapolis 2009; I. Kramnick, R. L. Moore, *The Godless Constitution: The Case Against Religious Correctness*, Norton 1996; *Church and State: The Supreme Court and the First Amendment*, ed. P. B. Kurland, Chicago 1975; A. M. Samaha, *Separation of Church and State. Constitutional Commentary*, www.questia.com/PM.qst?a=o&d=5002059531; J. H. Choper, *Securing Religious Liberty: Principles for Judicial Interpretation of the Religion Clauses*, Chicago 1996; reviewed: “First Things” 1996, No. 4; H. J. Berman, *The Weightier Matters of the Law: A Response to Solzhenitsyn*, [in:] *Faith and Order: The Reconciliation of Law and Religion*, Atlanta 1993, p. 381–392; H. J. Berman, *The Interaction of Law and Religion*, Norfolk 1974; *Law And Revolution*, Vol. 2: *The Impact of the Protestant Reformations on the Western Legal Tradition*, Harvard 2006; P. W. Carey, *American Catholic Religious Thought: The Shaping of a Theological and Social Tradition; A Matter of Interpretation: Federal Courts and the Law*, ed. A. Scalia, A. Gutmann, Princeton 1997; R. C. van Caenegem, *Legal History: a European Perspective*, London 1991; J. R. Vile, *Companion to the United States Constitution and its Amendments*, 2010; D. Laycock, *Collected Works on Religious Liberty*, Vol. 1–2; “Grand Rapids”, Mich. 2010; F. J. Sorauf, *The Wall of Separation: The Constitutional Politics of Church and State*, Princeton 1976; S. E. Mead, *Neither Church nor State: Reflections on James Madison’s ‘Line of Separation’*, “Journal of Church and State” 1968, No. 10, p. 352; A. P. Stokes, *Church and State in the United States*, 3 vols., New York 1950;

As Berman demonstrates, reciprocal freedom of religion and government was not understood as a prohibition of mutual influences,³³ and officials were not expected to declare public atheism or abandon their religious beliefs when taking office.³⁴ Orthodox proposals of symphony are similar to concepts of auxiliary government and religion as a director and motivator of social life. This kind of vision of relations between state and religion was prevailing in the United States of the 18th and 19th centuries.³⁵

The non-establishment and free exercise clauses should be interpreted in the context of their original purpose – to create a society with free interaction and debate of legal and political values on the one hand and religious teachings and values on the other hand.³⁶

It is well known that Jefferson's letter to the Danbury Baptists Association from 1802 is generally viewed as an authoritative declaration on the scope and effect of the constitutional religious clauses.³⁷ The First Amendment requires that the state be neutral (not hostile or neglecting) in its relations with groups of religious believers or non-believers; however it does not require the state to be their adversary.³⁸ Appropriate separation in fact protects from religion instrumentaliza-

J. Witte, *Religion and the American Constitutional Experiment*, New York 2000; *The Encyclopaedia of Politics and Religion*, ed. R. Wuthnow, Washington 1998.

³³ Like in the French artificial "laïcité".

³⁴ Cf. H. J. Berman, *Faith and Order*, p. 223.

³⁵ *Ibidem*, p. 229; sermons at public events: H. S. Stout, *The New England Soul Preaching and Religious Culture in Colonial New England*, New York 1986; public donations for religious institutions: H. J. Berman, *Faith and Order*, p. 229–230; see also *Worcester v. Georgia* U.S. (6 Pet) 515 (1832); H. J. Berman, *Toward an "Integrative Jurisprudence": Politics, Morality History*, "California Law Review" 1988, No. 76, p. 779.

³⁶ Cf. H. J. Berman, *Faith and Order*, p. 209–219.

³⁷ S. Barringer-Gordon v s.v., *Religion: United States Law*, [in:] *Oxford Intl. Enc. Leg. History*, Vol. 5; view that Constitution was written on the assumption that government is a threat to human liberty and not the other way around, the First Amendment constrains Congress, not churches: D. Laycock, *Continuity and Change in the Threat to Religious Liberty: The Reformation Era and the Late Twentieth Century*, 80. Minn. L. Rev. 1996, No. 1047; *idem*, *Religious Liberty as Liberty*, 7 J. Contem. Legal Issues 1996, No. 313.

³⁸ See: *Everson v. Board of Educ.* 1947 and *The American Constitution*, West 2001 p. 912–913. While historical longevity, the number of devotees, and the existence of leaders, religious literature, ceremonies and holidays are not essential elements of a religion, they are factors that should not be ignored and can be significant, especially as Orthodoxy has 2000 years of history, an apostolic succession of hierarchs, enormous literature and large number of devotees. See *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); W.W. Van Alstyne, *Constitutional Separation of Church and State: The Quest for a Coherent Position*, 57 Ann. Pol. Sci. Rev. 1963, No. 865, 881; A. Schwarz, *The Nonestablishment Principle: A Reply to Professor Gianella*, 81 Harv. L. Rev. 1968, No. 1465, 1469–70; *Texas Monthly Inc. v. Bullock* (1989); D. Laycock, *Towards a General Theory of The Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, Colum. L. Rev. 1981, No. 1373, 1381, 1384; *Mitchel v. Helms* (2000); *Stone v. Graham* (1980), *Rehnquist J. dissent*; *Edwards v. Aguillard* (1987) *Scalia J. Dissent*; J. H. Choper, *The Religion Clauses of the First Amendment: Reconciling the Conflict*, 41 U. Pitt. L. Rev. 1980, No. 673, 686–687; *Church, State and the Supreme Court: Current Controversy*, 29 Ariz. L. Rev. 1987, No. 551, 557; *Board of Educ. v. Mergens* (1990). Justices Scalia and Thomas argued that all or parts of the Lemon test should be abandoned. See also *Mitchell v. Helms* 530 U.S. 793 (2000); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), cf. however: *Locke v. Darvey*, 540 U.S. 712 (2004). A broad interpretation of the free exercise clause was adopted in *Wisconsin v. Yoder* 406 U.S. 205 (1972). Parental autonomy expressed when deciding on children's education can be beneficial to Orthodoxy in circumstances of public schools with aggressive anti-religious ideologies in the curriculum.

tion through state intrusions into religious doctrine, preaching etc. Father Agapios Honcharenko, the first priest of New Orleans's Orthodox parish (est. 1864), suffered persecution from Russian state officials and found asylum in the United States.³⁹ Lack of established religion was also helpful for Orthodox communities in San Francisco and the missionary activity of Bishop John Mitropolsky of Alaska.⁴⁰ Similarly Nicholas Bjerring was free to convert to Orthodoxy after the 1st Vatican Council's dogmatic declaration of papal infallibility.⁴¹

In contemporary mainstream jurisprudence opinions apologetic towards various genres and derivatives of legal positivism have prevailed. Statutory law is seen as an autonomous invention of the sovereign, self-defining human being, a construct or instrument that is developed by society to benefit itself and to fulfill tasks subjectively defined. Hence, any changes to the law, if approved by society in a prescribed procedure, are considered valid. The written law has no absolute, unchanging legal basis whatsoever. This view gives validity to the revolution that rejects the laws of "the old world" and to the full rejection of the moral norm if this rejection is approved by the legislative power.

However, the Orthodox Church agrees with the representatives of jurisprudence who believe that natural law and divine law are given by a transcendent Creator of Universe – they exist as an object outside of any productive intervention of human reason. This objective natural order demands civil authorities to establish the rule of freedom of worship and to safeguard it against attacks of private entities or official bodies.⁴²

Despite the prohibition on establishing particular religion, protection of free exercise, freedom of speech and other principles may allow or even compel secular power to accommodate some kinds of religious practice or behavior.

³⁹ J. H. Erickson, *Orthodox Christians*, p. 54.

⁴⁰ *Ibidem*.

⁴¹ J. H. Erickson, *Orthodox Christians*, p. 55. On p. 58ff. the author gives an outline of the harsh conditions of new parishes established spontaneously by emigrants, often finding the Orthodox faith to be an inseparable part of their national or ethnic identity; uncanonical attempts to imitate Protestant parish organization: p. 61; free development of parishes, schools, financial and social institutions for Orthodox emigrants: p. 65 ff.; financial problems after the Bolshevik Revolution in Russia caused subsidies to cease: p. 79; Living Church "metropolitan" Kedrovsky appeals to US courts to gain control over Archdiocese parishes and assets, defense of parishes against this intrusion: p. 80, Fourth All-American Council in Detroit (1924) and proclamation of "temporarily self-governing church" p. 80 ff.

⁴² See K. Wilk, transl. *Legal Philosophies of Lask*, Cambridge Mass. 1950, issues of conscientious objection: Justice Douglass dissent in *Gillette v. United States*, 401 U.S. 437, 463, 91, S.Ct. 828, 843, 28 L.Ed. 2d 168, 188 (1971) some general remarks on interpretation of the Constitution: M. Tushnet s.v., *Constitution of the United States: Interpretation of the Constitution*, [in:] *Oxford Intl. Enc. of Legal Hist.*, Vol. 2; cf. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798). Religious liberty according to D. Laycock (*Religious Liberty as Liberty*, p. 313) does not presuppose that religion is a good thing (contrary: J. H. Garvey, *An Anti-Liberal Argument For Religious Freedom*, 7 J. Cont. Legal Issues 1996, No. 275, 291) or that religion is subordinate to reason (different opinion: S. Sherry, *Enlightening the Religion Clauses*, 7 J. Contemp. Legal Issues 1996, No. 473). Religious liberty as a constituent factor of America as a Christian nation: *Church of the Holy Trinity v. United States* 143 U.S. 457, 471 (1892), it does not establish secular or materialistic public moral order (contr.: K. M. Sullivan, *Religion and Liberal Democracy*, 59 U.Chi.L.Rev. 1992, 195, 198).

It can be quite difficult, if not impossible, to in some hard cases identify when accommodation becomes or starts to resemble establishment or burdensome measures.⁴³

Despite any possible changes and emerging concepts expressed in statutory law and jurisprudence, artificial separation of religion and civil order, doctrine of public atheism or censorship of false neutrality is not seen as a “historical necessity” or “progress” by Orthodoxy, and no hierarch or council is allowed to adjust doctrine and canons to current policies and interests of any state or international organization. According to Orthodox opinion secular power has no right to extend itself to independence from the order of natural law established by God.⁴⁴

Orthodoxy holds that the New Testament demands that a secular ruler use the power of state for restricting evil (objective category of natural law) and supporting good (also objective category), in which it sees the moral meaning of the existence of a state.⁴⁵

A secular sovereign is in Orthodox opinion limited, but anarchy, understood as the absence of proper order in a state and society, is also contrary to the Orthodox teaching.⁴⁶ The Orthodox Church obligates the faithful to obey state power regardless of the convictions and faith of its bearers, but also prays “that we may lead a quiet and peaceable life in all godliness and honesty”.⁴⁷ Moreover, secular legal provisions are only minimal standards; Christians should imitate the perfect humanity of Jesus Christ, put greater responsibilities towards others, especially in official and professional activities. In this context these activities include Archbishop Michael Konstantinides partaking in the presidential inauguration of 1957 or his successor Archbishop Iakovos Koukouzis’s walk with Martin Luther King Jr. in the march on Selma, Alabama in 1967.

The different nature and origin of Church and State is stressed as the Orthodox Church characterizes itself as a visible, universal, catholic and apostolic Church founded directly by Jesus Christ, The God-instituted idea and nature of

⁴³ See: Crump, Greesman, *Day, Cases and Materials on Constitutional Law*, New York–San Francisco 1998, p. 975; M. W. McConnell, *Accommodation of Religion*, 1985; S. G. Gey, *Why is Religion Special? Reconsidering the Accommodation of Religion under the Religion Clauses of the First Amendment*, “University of Pittsburgh Law Review” 1990, No. 75; I. C. Lupu, *Reconstructing the Establishment Clause: The Case Against Discretionary Accommodation of Religion*, 140 U.Pa. L. Rev. 1991, No. 555; *Rosenberger v. Rector, University of Virginia*, 1995, esp. Thomas J. concurrence and historical analysis of clause; contrary to Orthodox vision of religion-science relations: *Mozert v. Hawkins County Board of Education* (6th Cir. 1987) and *Smith v. Board of School Commissioners* (11th Cir. 1987); Davidov, *Secular humanism: as an “Established Religion”: a response to Whitehead and Conlan*, 11 Texas Tech. L. Rev. 1979, No. 511 Mitchel, *Secularism and Public Education: The Constitutional Issues*, 67 B.U.L. Rev. 1987, No. 603, Note, “*Secular Humanism: A Blight on the Establishment Clause*”, 18 Loy. U. Chi. L.J. 1987, No. 1245.

⁴⁴ Overview: J. Witte, F. S. Alexander, *The Teachings of Modern Orthodox Christianity on Law, Politics and Human Nature* 2007.

⁴⁵ Rom. 13: 3–4; Declaration of clear and substantial opposition against transgressions of natural law: Contemporary Moral Issues. Statement on Issues Concerning the Sanctity and Dignity of Human Life, www.orthodoxresearchinstitute.org/articles/ethics/contemporary_moral_issues.htm (13.07.2011).

⁴⁶ Rom. 13: 2.

⁴⁷ 1 Tim. 2: 2.

state power is revealed in history only indirectly, and there is no state with the same ontological status as the Orthodox Church considers itself to have.

The Orthodox Church as “the body of Christ”⁴⁸ and “the pillar and ground of the truth”⁴⁹ in essence has nothing evil or imperfect in itself. These characteristics are not shared by the state. In Orthodox opinion the state should be aware that secular well-being cannot be established without respect for moral order. In the Orthodox view a political entity cannot be seen as harmonious as long as it gives the monopoly to secular ideologies in legislation and administration. However, Orthodox opposition should not be interpreted as any kind of propaganda against a particular person, group, class or nation, for “we wrestle not against flesh and blood, but our struggle is spiritual, aimed to deliver people from the pernicious impact made on their souls by dark forces, spiritual wickedness in high places”.⁵⁰

Orthodox hierarchs believe that the establishment clause cannot imply or promote practical atheism, especially forced on believers. Religious bodies and their legitimate representatives should be effectively included in relevant decision-making proceedings. Such principles presuppose certain division of domains between church and state and their non-interference into each other’s affairs.⁵¹

The two-thousand-year-old Church’s experiences and tradition have developed a peculiar model of cooperation between church and state. Since church-state relations are reciprocal, a completely appropriate model could emerge in history only in a truly Orthodox state by sincere conversion of the sovereign. However, some ideas and experiences can be *mutatis mutandis* applied in the United States.

Symphony is essentially friendly and honest cooperation, reciprocal support and responsibility without intrusions into the exclusive domain of each other. Coherent with symphony is the Byzantine idea of taxis (order), understood not as subordination of the Church to secular despotism but as proper, just and beneficial order of the state, society and world. This hierarchical order is necessary to keep the world in peace and cohesion.⁵²

Justinian attempted in Novella 6 to apply the idea of symphony: in the Novellae’s provisions priesthood is supposed to take care of divine affairs, while government guides and takes care of earthly matters.

Further Byzantine legislation gives us more material useful in describing the normative model of symphony. In the foreword to the Ecloga by Leo III (r. 717–741) and Constantine V (co-ruler, r. 741–775) it is stated that law is a device

⁴⁸ 1 Cor. 12: 27.

⁴⁹ 1 Tim. 3: 15.

⁵⁰ Eph. 6: 12.

⁵¹ Analogy to Western canon law distinction between *causae spirituales* and *causae saeculares*.

⁵² Cf. *Taxis in Oxford Dictionary of Byzantium*, 1991, Vol. 3: it is the harmonious hierarchy of the institution of the state and Church, human taxis mirrors the taxis of the created world (kosmos), taxis is considered as a motive for just and beneficial legislation, the danger of rigidity is avoided by Oikonomia; imperial universalism, secular power and theological problems, symphony in practice, religious role of the Emperor: J. Meyendorff, *Justinian, the Empire and the Church*, “Dumbarton Oaks Papers” 1968, Vol. 22, p. 43–60.

given by God himself to enable men to live by His word and commandments. The law is given by God to the ruler with the purpose of establishing a Christian state.⁵³

Patriarch Photios,⁵⁴ in the foreword to *Eisagoge*, characterized law as a connecting factor between the human mind and the matter of the body. The law becomes a third institution between patriarch and emperor and is a linking factor placed above the emperor and given by God Himself.⁵⁵

Another directive of relationships between state and church power is contained in the *Epanagoge* (later 9th century) where temporal power and the priesthood are compared to the human body and soul; as both are necessary just for civil order.⁵⁶

The Orthodox Church holds that preaching the truth is obligatory whatever the attitude of state bodies may be. In this area, the Church always considered itself as absolutely independent from any state. In case of persecution the Church is called to endure hardships and continue its mission without unrest or refusing to be loyal to the hostile state. Legal sovereignty in the territory of a state is not abrogated by intolerance towards Christianity. Orthodoxy teaches that the condition of a fallen man is far from being the ideal of perfection aspired to by Christians and revealed in Christ.⁵⁷ Therefore there are limits to which the Orthodox faithful should obey imperfect human law. If exclusively earthly order matters had been regulated, the Orthodox Christian is obliged to obey legislative measures, even if they are imperfect, ineffective etc.

The legalistic approach is not absolute. If secular authority forces believers to apostatize from the Orthodox Church and poses a threat to salvation or involves an apostasy or commitment of another doubtless sin, refusal to obey the state is obligatory.⁵⁸ If the Church authority has found obeying particular legal provisions impossible, after due consideration, hierarchs may enter into discussion with au-

⁵³ J. H. A. Lokin s.v., *Byzantium: Byzantine Legislation*, [in:] *Oxford International Encyclopedia of Legal History*, Vol. 1.

⁵⁴ Orthodox Church saint, lived c. 820–891.

⁵⁵ W. J. Arests, T. E. van Bochove, *The Prooimion of the Eisagoge: Translation and Commentary*, "Subsectiva Groningana" 2001, No. 7; P. E. Pieler, *Anakatharsis ton palaioon nomoon" und makedonische Renaissance*, "Subsectiva Groningana" 1989, No. 3, p. 61–77; B. H. Stolte s.v., *Basil I and The Macedonian Renaissance*, [in:] *Oxford International Encyclopedia of Legal History*, Vol. 1.

⁵⁶ The office of bishop is considered as superior to that of a secular ruler, the soul superior to the body: Const. Ap. 2.34.2 (s.v. episkopos Lampe, Greek Patristic Lexicon, Oxford). Catholicity and equality of local Orthodox Churches: G. I. Konidaris, *The Oecumenical Patriarchate in the Orthodox Church*, "Balkan Studies" 1973, No. 14, p. 331.

⁵⁷ Orthodox teaching about original sin and human nature: J. Pelikan, *The Christian Tradition. A History of the Development of Doctrine*, Vol. 1: *The Emergence of the Catholic Tradition (100–600)*, Chicago–London 1971, esp. Christian anthropology, inevitability of sin, human corruption and damaged nature differentiated from the perfection of the Church and Christ, Pelagian heresy, Greek and Roman concepts of tyche, techne, kairos, moira, fortuna, Christian doctrine of free will and self-determination: to autexousion; Gnostic heimarmene-universal fate: p. 279–331.

⁵⁸ A heroic example has been given by the Orthodox priest Father George Calciu: www.firstthings.com/onthesquare/2011/04/fr-george-calcu-first-century-christian-in-the-twentieth-century. I would only like to add that the 1st-c. Roman authorities were not as cruel as the Securitate. Administrative problems and selective religious freedom issues: www.firstthings.com/article/2010/09/holy-war-over-ground-zero.

thorities, call upon their flock to use the available remedies and other procedures to change the legislation or review the authority's decision, and subsequently appeal to legitimate international entities. If all this brings no proper result hierarchs can appeal to the faithful for peaceful civil disobedience.⁵⁹

Neither establishment nor reform of any constitutional system is considered by the hierarchs as a primary vocation of the Orthodox Church. The Church is obliged by its supernatural origin and character to keep a reasonable distance from various powers of the secular world. The state should not interfere in the life of the Church or its government, doctrine, liturgical life, counseling, etc., or the work of the canonical church institutions in general, except for those aspects where the Church is supposed to operate as a legal identity obliged to enter into certain relations with the state (administrative law, taxes, contracts etc.).

Isolationism, or the view that the state and politics are essentially evil, is alien to Orthodox teaching. Not to declare secular society condemned or evil, but to avoid any confusion of church and state affairs and to prevent the church authority from acquiring a temporal nature, canon law prohibits the clergy from joining or participating in the affairs of state government. Apostolic Canon 81 reads: "It does not befit a bishop or a presbyter to go into the affairs of the people's government, but to be always engaged in the affairs of the Church".⁶⁰

When discussing nationalism and the instrumental use of the Orthodox faith as quasi-national identification it is good to note that Ecumenical Patriarchate at the Great (Μεῖζον) Local Synod in Constantinople (1872) condemned ethnophyletism and published a "Resolution" condemning that phenomenon in the Church. This document was based on general principles formulated by a special committee of the Synod.⁶¹ "Nation" in the sacred canons means the metropolitan province as geographical boundaries, for example the United States.⁶²

The canons dealing with the election and consecration of hierarchs and other Church functionaries never define the racial or national characteristic as a qualification of eligibility. The Holy and Great Local Synod in August, 1872 condemned phyletism and published a "Resolution" (Όρος) censuring and condemning phyletism, defined as "racial discrimination and nationalistic contention, enmities and discord in the Church of Christ".

A good example of the Orthodox vision of interaction with society is provided by documents normatively defining the mission and constitution of the Greek Archdiocese of America.⁶³ The most important duty is to proclaim the Gospel of

⁵⁹ Official overview: www.mospat.ru/en/documents/social-concepts.

⁶⁰ Similarly: Apostolic Canon 6 and Canon 10 of the Seventh Ecumenical Council; parallel imperial legislation: *Univervis clericis praeter ecclesiasticos actus nihil omnino cum aliis causis debet esse commune, Novellae Valentinianae III, tit. XXXIV,7 (452 AD)*.

⁶¹ S. Runciman, *The Orthodox Churches and the Secular State*, Oxford 1971, p. 26 ff.

⁶² See also Apostolic Canon 34 and Canon 9 of the Synod in Antioch and the interpretation of Zonaras to that canon.

⁶³ The Charter of the Greek Orthodox Archdiocese of America: www.goarch.org/archdiocese/documents/charterpage/index_html; Cf. G. Pappaioannou, *The Historical Development of the Greek Orthodox Arch-*

Christ, to teach and spread the Orthodox Christian Faith, and moreover the Archdiocese is obliged to energize, cultivate, and guide the life of the Church in the United States according to the Orthodox Christian Faith and Tradition. The Church should sanctify the faithful and serve as a witness of the message of Christ to all inhabitants of the United States of America. Orthodox Christians are obliged to speak the truth, never compromising the integrity of Orthodox teachings. In Article 9 of the Charter the structure of Spiritual Courts is established: a Spiritual Court of First Instance within the Archdiocesan District and within each Metropolis. Appeals from the rulings of the Spiritual Court of the Second Instance may be submitted to the Ecumenical Patriarchate for review. The decisions of the Ecumenical Patriarchate regarding these appeals are final and irrevocable, thus any appeal to secular (internal and international) authority is excluded. Regulation reflects precedents of appeal to secular power.⁶⁴ Archdiocesan Clergy-Laity Congresses (“Congress”), convened at least triennially and presided over by the archbishop, are, except for dogmatic or canonical matters, concerned with all issues which affect the life, mission, growth and unity of the archdiocese. The election of the archbishop is the exclusive canonical right of the Holy Synod (art. 13 a). A nominee for the office of Metropolitan, Auxiliary Bishop or Archbishop shall be a person of deep Orthodox faith and ethos (complete acceptance of dogmas and moral teaching is *conditio sine qua non*) (see art. 13 b; 14 d and 15 a). Except for dogmatic and canonical matters within the competence of the Ecumenical Patriarchate, the Archdiocesan Council is concerned with problems affecting the Holy Archdiocese of America, and makes such decisions thereon as it deems necessary and acts as the consultative body to the archbishop and to the Eparchial Synod (Art. 17 c; cf. art. 18 a; which is a declaration of the monarchical principle of the bishop’s jurisdiction in all ecclesiastical cases). The monasteries that operate in the United States of America are obliged to continue the long-established monastic life and witness and to function according to the canonical tradition and practice of the Church. They function according to the prevailing Monastic Law and the letter and the spirit of the regulations that define their operation (art. 21 a, c). All regulations pertaining to the implementation of this Greek Orthodox Archdiocese have to agree with the Holy Canons, Sacred Tradition and long-existing life and practice of the Orthodox Church (art. 22 a).

Independent church legislative competence and immunity from state intrusion was declared in the Court’s opinion in *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952):

Legislation which in a hierarchical church determines ecclesiastical administration or the appointment of the clergy, or transfers control of churches from one group to another, interferes

diocese of North and South America, [in:] F. K. Litsas, *A Companion to the Greek Orthodox Church*, New York 1984, p. 178–206.

⁶⁴ See the earliest evidence: Euseb., *Historia Ecclesiastica* VII. 27–30; various Christian interactions and cooperation with secular rulers before 313 AD: M. H. Shepherd Jr., *Liturgical Expression of Constantinian Triumph*, “Dumbarton Oaks Papers” 1967, Vol. 21, p. 64 ff.

with the free exercise of religion contrary to the Constitution (p. 344 U.S. 106–116, 344 U.S. 119). Freedom to select the clergy, where no improper methods of choice are proven, must now be said to have federal constitutional protection against state interference, as part of the free exercise of religion (p. 344 U.S. 115–116). Even in those cases where property rights follow as incidents from the decisions of church custom or law on ecclesiastical issues, the church rule controls and must be accepted by the civil courts (Ad 80 U.S. 115–16, 120–121).

The concept of separate and independent ecclesiastical jurisdiction, meeting Orthodox opinion, was endorsed by the Supreme Court in *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). In this case the Supreme Court of Illinois affirmed in part and reversed in part holding that legitimate canonical judgments had to be set aside as “arbitrary” because proceedings were not conducted “according to the Illinois Supreme Court’s interpretation” of the Church’s internal law (60 Ill.2d 477, 328 N.E.2d 268 (1975)).

The Illinois Supreme Court rejected the decisions of the highest ecclesiastical tribunals upon the disputed issues. The Supreme Court declared the secular court’s inquiry into church polity and resolutions as impermissible. Such Caesaropapal interpretational fallacy was fatal to the judgment.

To cite this judgment:

Consistently with the First and Fourteenth Amendments, “civil courts do not inquire whether the relevant [hierarchical] church governing body has power under religious law [to decide on such disputes]. ... Such a determination ... frequently necessitates the interpretation of ambiguous religious law and usage. (p. 426 U.S. 709) To permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide ... religious law [governing church polity] ... would violate the First Amendment in much the same manner as civil determination of religious doctrine”. [See also: *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 396 U.S. 369 (1970) (J. Brennan, concurring).] [...] The principles limiting the role of civil courts in the resolution of religious controversies that incidentally affect civil rights were initially fashioned in *Watson v. Jones*, 13 Wall. 679 (1872), [...] With respect to hierarchical churches, *Watson* held: “[T]he rule of action which should govern the civil courts ... is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.” *Id.* at 80 U.S. 727. [...] All who unite themselves to such a body [hierarchical church – R.M.] do so with an implied consent to this government, and are bound to submit to it. 13 Wall. at 80 U.S. 728–729 (emphasis supplied). (page 426 U.S. 715).

Despite the independence of the church’s internal constitution and jurisdiction, as has been acknowledged by the United States judiciary, a name such as canon law given to the Church’s legal order suggests a parallel or imitation of secular law. A more correct term is “the tradition of the holy canons”. This law of the Church is an outgrowth of the holy canons; and it appears on the surface to have much in common with secular law, involving persons invested with authority (bishops), as well as the means of creating, formulating, interpreting, executing, validating, amending and revoking laws (through synods or conciliar actions). The

First Ecumenical Council of Nicaea (325) referred for the first time to canons as the disciplinary measures of the Church. The distinction, therefore, between the disciplinary measures and rules adopted by the Church and the state legislative actions occurred early.

The Ecumenical Patriarch⁶⁵ reminds us that within Orthodoxy there is basically a single law (fundamental regulations), whose most important sources are common to all local Churches. The Orthodox Church is not a sum of a number of independent Churches, or a federation of Churches with an external, inter-church law (quasi-public international law), but one Church of the Nicene Symbol, St. Paul's Body of Christ, within which the local Churches are expressions of the one universal Church in various places.⁶⁶

The first Orthodox Divine Liturgy in the New World was celebrated on July 20th 1741. In 1794 the first Russian Orthodox missionaries arrived on Kodiak Island, Alaska. After over 200 years the Orthodox Church still preaches the same faith in the rapidly changing American nation, which faith it professed in the similarly influential Roman Empire. And still Orthodox teaching remains influential, inspiring and converting people – because of its immense answer-giving potential.

⁶⁵ B. Archondonis, *A Common Code for the Orthodox Churches* (Kanon I), 1973, p. 45–53.

⁶⁶ *Ibidem*, p. 48.